IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 4165 /2004
DATE OF PRESENTATION : 27.10.2004

PETITIONERS
ORIGINAL DEFENDANTS

1. Nazeer Mohd, aged about 50 years, son of Noor Mohd, caste Musalman, resident of Marimai Road, Magarpara, Bilaspur, Tah and Distt. Bilaspur (Chhattisgarh)

2. Smt Kamrunisha, aged about 60 years, wife of Seikh Nazeer, and daughter of Late Noor Mohd, caste – Musalman resident of – in front of house of Ramgopal Tiwari's gully, Mumharpara, Juna Bilaspur, Tah and Distt. Bilaspur (Chhattisgarh)

3. Smt Jaibenisha, wife of Seikh Ibrahim, aged about 65 years, and daughter of Noor Mohd, caste- Musalman, resident of Marimai Road, In front of Atiyana Tent House, Magarpara, Bilaspur, Distt. Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS
ORIGINAL PLAINTIFF

1. Basheer Mohd., aged about 70 years, son of Noor Mohd, caste – Musalmaan, resident of Dadhi, Tah. Bemetara, Distt. Durg (CG)

2. Nagar Palik Nigam, through : the Commissioner / Mayor, Nagar Nigam, Bilaspur (Chhattisgarh) (**ORIGINAL DEFENDANT)**

3. The State of Chhattisgarh, through : the District Collector, Bilaspur (CG) (**ORIGINAL DEFENDANT)**

(2)

(4)

WRIT PETITION UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 4165/2004 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

13/12/2004

Shri M.K. Bhaduri, Counsel for the petitioners.

Shri Utkarsh Verma, Panel Lawyer for the respondent No.3/State.

Heard on admission as well as on M.W.P.No.4532/2004.

Petitioners' contention in argument is that the learned appellate Court granting injunction against the petitioners has committed illegality as no injunction can be granted against the co-sharers.

It is admitted position that the owner of the suit house was Noor Mohammed and his sons and daughters are the petitioners and respondent No.1. It is evident that after the death of Noor Mohammed no partition of the property took place amongst the petitioners and respondent No.1. Petitioner No.1 is attempting to demolish the house and reconstruct the same. Therefore, a suit to restrain the petitioner No.1 for causing damage to the house has been filed and by application temporary injunction sought for.

Learned appellate Court ordered invoking the jurisdiction under Order 39, Rule 1 and 2 of the C.P.C., that petitioner No.1 is restrained from demolishing and reconstructing the suit house till the disposal of the suit.

The impugned order does not restrain the petitioners from interfering with their possession and enjoyment of the suit property. Whatever has been restrained is that the petitioner No.1 shall not dispossess respondent No.1 and shall not construct the suit house after demolishing or causing damage to the suit premises.

(22)

XI-HC—78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Taking into account the facts present in the case, the order does not call for any interference as neither the order passed is without jurisdiction nor is passed abusing the process of law. Therefore, the petition is dismissed summarily and M.W.P.No.4532/2004 for interim relief is also dismissed.

In the light of the aforesaid order, I.A.No.8448/2004 for urgent hearing stands disposed of.

However, considering the facts of the case, it is directed that the learned trial Court shall dispose of the case in accordance with law as early as possible.

Sd/-
V.K. Shrivastava
Judge